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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 09/643,551  | 08/22/2000  | Richard C. Robertshaw | 567P                | 9686             |
| 7590  | 03/31/2004  |                       | EXAMINER            |                  |
| Thomas M Freiburger<br>650 California Street<br>25th Floor<br>San Francisco, CA 94108 |             |                       | VU, STEPHEN A       |                  |
|   |             |                       | ART UNIT            | PAPER NUMBER     |
|   |             |                       | 3636                |                  |

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                        |
|------------------------------|------------------------|------------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>    |
|                              | 09/643,551             | ROBERTSHAW, RICHARD C. |
|                              | <b>Examiner</b>        | <b>Art Unit</b>        |
|                              | Stephen A Vu           | 3636                   |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 January 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 5 and 9-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 5 and 9-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachments(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5 and 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Berg'323 in view of Jensen.

Berg'323 shows a chair seat and standing apparatus (12) comprising a pair of pads (16), a pair of seat platforms (17R,17L), a lower platform (15), and resilient means (31) positioned below the seat platforms and secured to the lower platform for springing action to allow for pitch and roll motions. However, it appears that the connection assembly (27) prevents the apparatus to perform yaw motions.

Jensen teaches an apparatus comprising a connection mechanism (40) and resilient means (90) positioned between an upper platform (22) and a lower platform (37), wherein the apparatus can perform pitch, roll and yaw motions (see col. 2, lines

25-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the connection mechanism (40) of Jensen's apparatus in lieu of the connection assembly (27) of Berg'323's invention, in order to allow the apparatus (12) to also perform yaw motions. This modification would allow a user to accomplish all three pitch, roll, and yaw motions on the apparatus to satisfy the user's comfort. In addition, manufacturing cost would be reduced by using fewer steps and parts to construct Berg'323's apparatus with the connection mechanism (40) of Jensen.

With claims 10-11, Berg'323 shows the resilient means (31) to have four resilient units.

### ***Response to Arguments***

Applicant's arguments filed January 20, 2004 have been fully considered but they are not persuasive. The applicant has argued that the references of Berg'323 and Jensen together do not teach the applicant's claimed invention. The examiner's disagrees with this argument. The rejection is based on the modification of Berg'323 in view of Jensen's teaching of allowing the apparatus to perform all the functions of pitch, roll, yaw, and glide motions. First of all, Berg'323 discloses the claimed invention comprising a pair of pads (16), a pair of seat platforms (17R,17L), a lower platform (15), and resilient means (31) positioned below the seat platforms and secured to the lower platform for springing action to allow for pitch and roll motions. Jensen teaches an apparatus comprising a connection mechanism (40) and resilient means (90) positioned between an upper platform (22) and a lower platform (37), wherein the apparatus can

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perform pitch, roll and yaw motions (see col. 2, lines 25-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the connection mechanism (40) of Jensen's apparatus in lieu of the connection assembly (27) of Berg'323's invention, in order to allow the apparatus (12) to also perform yaw motions.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Stephen Vu*

Stephen Vu  
March 23, 2004

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600